

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC DOUGLAS CROSBY,

Plaintiff,

vs.

No. CV 21-0899 RB/KRS

SAN JUAN COUNTY ADULT DETENTION CENTER,
SERGENT COCKRELL, OFFICER TOLBERT,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Federal Rule of Civil Procedure 41(b) on the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Doc. 1) filed by Plaintiff Eric Douglas Crosby. The Court will dismiss the Complaint without prejudice for failure to comply with Court orders, failure to comply with federal statutes and rules, and failure to prosecute the case.

Crosby is an incarcerated prisoner. He filed his Complaint on September 13, 2021. (Doc. 1.) Crosby also submitted an application to proceed under § 1915 on September 13, 2021. (Doc. 2.) The Court granted the application to proceed *in forma pauperis* on January 28, 2022. (Doc. 7.) The Court's Order required Crosby to make an initial partial payment of \$28.33 or show cause why he should not be required to make the payment within 30 days of entry of the Order. (*Id.* at 1.) Crosby did not make the initial partial payment and did not respond to the Court's January 28, 2022, Order.

On March 29, 2022, the Court issued an Order to Show Cause. (Doc. 8.) The Order directed Crosby to show cause within 30 days why the case should not be dismissed for failure to comply with the Court's January 28, 2022 Order to make an initial partial payment. (*Id.* at 1–3.) The Order

also notified Plaintiff Crosby if he did not show cause within 30 days, the case could be dismissed without further notice. (*Id.* at 3.)

More than 30 days has elapsed since entry of the March 29, 2022, Order and Crosby has not shown cause why the case should not be dismissed, has not responded to the Court's March 29, 2022 Order, and has not communicated with the Court. Instead, mail to Crosby at his address of record is being returned marked "not here." (Doc. 9.)

The Court's research indicates that Crosby is no longer at the San Juan County Adult Detention Center and there is no record of any other address for him. It appears that he has been transferred or released from custody without advising the Court of his new address as required by D.N.M. LR-Civ. 83.6, thus severing contact with the Court. He has failed to comply with the Court's local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980) ("It is incumbent on litigants, even those proceeding pro se, to follow the federal rules of procedure The same is true of simple, nonburdensome local rules") (citation omitted).

Further, when a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:


The court ***shall*** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1) (emphasis added). Crosby was ordered to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused but has failed to comply with the Court's Order.

Crosby has failed to comply with the Court's January 28, 2022 and March 29, 2022 Orders, failed to comply with federal statutes, and failed to prosecute this action. The Court may dismiss an action under Rule 41(b) for failure to prosecute, to comply with the rules of civil procedure, to

comply with statutes, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003); *Bradenburg*, 632 F.2d at 122. Therefore, the Court will dismiss this case without prejudice under Rule 41(b) for failure to comply with the requirements of 28 U.S.C. § 1915, to comply with the Court's January 28, 2022 and March 29, 2022 Orders, and to prosecute this action.

IS ORDERED that the Complaint for Violation of Civil Rights Pursuant to 42 U.S.C. § 1983 filed by Eric Douglas Crosby (Doc. 1) is **DISMISSED without prejudice** under Rule 41(b) for failure to comply with a Court order, failure to comply with statutes and rules, and failure to prosecute.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE